

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CROWDSTRIKE, INC., TREND MICRO, INC., and
AO KASPERSKY LAB
Petitioner,

v.

OPEN TEXT INC.,
Patent Owner.

IPR2023-00556¹
Patent 8,726,389 B2

Before BARBARA A. PARVIS, GARTH D. BAER, and
AARON W. MOORE, *Administrative Patent Judges*.

BAER, *Administrative Patent Judge*.

ORDER

Termination as to CrowdStrike, Inc. Due to Settlement
35 U.S.C. § 317; 37 C.F.R. § 42.74

¹ Trend Micro, Inc. who filed a petition in IPR2023-01459 has been joined as a petitioner in this proceeding. AO Kaspersky Lab, who filed a petition in IPR2024-00035 has also been joined as a petitioner in this proceeding.

Patent Owner Open Text, Inc. (“Patent Owner”) and Petitioner Crowdstrike, Inc. (“Crowdstrike”) filed a “Joint Motion to Terminate Proceeding” (Paper 17 (“Motion”)) and a “Joint Request to Treat Agreement as Business Confidential Information” (Paper 18 (“Joint Request”)) in this proceeding. After filing the Motion and Joint Request, Petitioners Trend Micro, Inc. (“Trend Micro”) and AO Kaspersky Lab were joined to this proceeding. Papers 21, 22. As such, we treat the Motion as a motion to terminate Petitioner Crowdstrike from this proceeding.

Patent Owner and Crowdstrike (collectively, “the parties”) represent that they have reached settlement as evidenced by a written, confidential agreement (Ex. 1024 (“Agreement”)), filing a true copy of the same as required under 37 C.F.R. § 42.74(b). Motion 2. The parties represent that they have “reached a resolution as to all the disputes in this proceeding and as to the ’389 patent.” Motion 2. The parties further represent that no other “agreement, written or oral, exist between or among” Patent Owner and Crowdstrike. Motion 2.

This proceeding is at an intermediate stage. We have not yet decided the merits of this proceeding, and a final written decision has not been entered in this proceeding. Furthermore, there are strong public policy reasons to favor settlement between the parties to a proceeding. Patent Trial and Appeal Board Consolidated Trial Practice Guide, 84 Fed. Reg. 64,280 (Nov. 21, 2019). Under these circumstances, and in view of the parties’ settlement and representations, we determine that good cause exists to terminate the proceeding with respect to Crowdstrike. The grant of the motion to terminate will not result in the termination of this *inter partes* review, however, because Trend Micro and AO Kaspersky Lab remain as Petitioners.

After reviewing the Agreement between Patent Owner and CrowdStrike, we find that the Agreement contains confidential business information regarding the terms of settlement. We determine that it is appropriate to treat the Agreement as business confidential information and keep it separate from the file of U.S. Patent No. 8,726,389. *See* 37 C.F.R. § 42.74(c).

The parties further request that the Board “inform us if anyone seeks production of the Agreement and afford the parties an opportunity to address whether such request is supported by good cause.” Joint Request 2. However, neither the statute nor the regulation provides for any such notification to the parties or opportunity to address whether a request is supported by good cause, and the parties have not provided any special circumstance that would justify issuing an order that purports to impose additional requirements. Accordingly, we *deny* this portion of the parties’ Joint Requests.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Joint Motion to Terminate with respect to CrowdStrike, Inc. is *granted*;

FURTHER ORDERED that Trend Micro, Inc. and AO Kaspersky Lab will remain as Petitioners in this proceeding, and the case will continue to proceed;

FURTHER ORDERED that the Joint Request to Treat Agreement as Business Confidential Information is *granted-in-part*, and the Agreement (Ex. 1024) shall be kept separate from the file of U.S. Patent No. 8,726,389 B2, and made available only to Federal Government agencies on written

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request, or to any person on a showing of good cause, pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c); and

FURTHER ORDERED that the case caption in IPR2023-00556 shall be changed to reflect the termination of CrowdStrike, Inc. as a petitioner in accordance with the attached example.

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Example Case Caption for Proceeding

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